

**FILED**

**MAR 22 2019**

Judge James F. Hyland

**IN RE: ZOSTAVAX LITIGATION**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MIDDLESEX COUNTY**

MCL NO. 629 *L-4999-18*

**CASE MANAGEMENT ORDER**

**THIS ORDER APPLIES TO ALL  
CASES**

**DISCOVERY OF DOCUMENTS AND  
ELECTRONICALLY STORED  
INFORMATION BY PLAINTIFFS AND  
DEFENDANT MERCK & CO., INC. AND  
DEFENDANT MERCK SHARP & DOHME  
CORP. - STIPULATED**

**THIS MATTER** having come before the Court with the Consent of all Counsel, and for good cause having been shown, the Court hereby enters the following order:

**IT IS** on this 22 day of March, 2019,

**ORDERED** as follows:

This Order sets forth the protocol for the production of documents, both hard-copy documents and electronically stored information ("ESI"), by and between Plaintiffs and Defendants Merck & Co., Inc. and Merck Sharp & Dohme Corp. (collectively, "Merck") in the above-captioned action (the "Action"). (Plaintiffs and Merck are referred to herein collectively as the "Parties.") This Order shall apply to all cases that are currently pending in MCL 629 or subsequently transferred to MCL 629.<sup>1</sup>

**I. GENERAL**

1. This Order will help to streamline ESI and Document discovery to best carry out the requirements set forth in the New Jersey Court Rules.

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<sup>1</sup> This Order, in near identical form, was entered in *In re: Zostavax (Zoster Vaccine Live) Products Liability Litigation*, MDL No. 2848 (E.D.Pa.).

2. The Parties shall take all reasonable steps to comply with the protocols set forth herein.

3. Except as specifically limited herein, this Order governs the production of discoverable ESI and Documents by Plaintiffs and Merck during this Action. In the event of transfer to other courts, this Order will remain in effect in all respects, until adopted by the transferee court or replaced by a successor Order.

4. This Order shall not enlarge or affect the proper scope of discovery in this Action, nor imply that discovery produced under the terms of this Order is properly discoverable, relevant, or admissible in this or in any other litigation. Additionally, this Order does not alter or expand the preservation obligations of the Parties.

5. Subject to the Parties' objections and responses to requests for production of Documents, and subject to the Parties' Stipulated Protective Order, all Documents or portions of Documents that are identified as responsive to discovery requests not designated as "privileged" shall be produced in the manner provided herein.

6. Either party may redact from its productions (including from the production images and related text and data) information that is beyond the scope of discovery. The Parties shall indicate on a redacted Document whether any redaction is (1) for privilege, the specific basis for the privilege being listed on the privilege log; (2) to protect privacy; (3) of information required to be redacted by New Jersey law or regulation; (4) of information about products other than Zostavax, Varivax, and ProQuad; (5) of information that constitutes a trade secret; (6) of information Merck obtains from a third party pursuant to a contract requiring confidentiality. Nothing in this Order shall be interpreted to require disclosure of materials that a Party contends are not discoverable or are protected from disclosure by New Jersey rule, the attorney-client

privilege, the attorney work product doctrine, and/or any other privilege that may be applicable and valid.

7. Plaintiffs and Merck agree to abide by the terms of this Order in good faith and they agree to promptly alert all other Parties concerning any technical problems associated with complying with this Order. To the extent compliance with this Order imposes an undue burden; the Parties shall promptly confer in an effort to resolve the issue.

8. Consistent with their obligations under the New Jersey Court Rules, the Parties will attempt to resolve, in person, in writing (including e-mail) or by telephone, disputes regarding the issues set forth herein prior to filing a motion with the Court, or otherwise seeking relief. If the Parties are unable to resolve the dispute after a good faith effort, the Parties may seek Court intervention in accordance with the Court's procedures.

## II. DEFINITIONS

1. **"Document"** is defined to be synonymous in meaning and equal in scope to the usage of this term in the New Jersey Court Rules. The term "Document" shall include Hard-Copy Documents, Electronic Documents, and ESI as defined herein.

2. **"Electronic Document or Data"** means Documents or Data existing in electronic form including but not limited to: e-mail or other means of electronic communications, word processing files (e.g., Microsoft Word), computer presentations (e.g., PowerPoint slides), spreadsheets (e.g., Excel), and image files (e.g., PDF).

3. **"Electronically stored information"** or **"ESI,"** as used herein, has the same meaning as in the New Jersey Court Rules.

4. **"Hard-Copy Document"** means Documents existing in tangible form, including but not limited to paper Documents.

5. **“Native Format”** means and refers to the format of ESI in which it was generated and/or as used by the producing Party in the usual course of its business and in its regularly conducted activities.

6. **“Metadata”** means: (i) information embedded in or associated with a file that is not ordinarily viewable or printable from the application that generated, edited, or modified such native file which describes the characteristics, origins, custody, usage, and/or validity of the electronic file; and/or (ii) information generated automatically by the operation of a computer or other information technology system when a native file is created, modified, transmitted, deleted, or otherwise manipulated by a user of such system.

7. **“Media”** means an object or device, real or virtual, including but not limited to a disc, tape, computer, or other device on which data is or was stored.

8. **“Optical Character Recognition”** or **“OCR”** means the optical character recognition file which is created by software used in conjunction with a scanner that is capable of reading text-based Documents and making such Documents searchable using appropriate software.

9. **“Hash Value”** is a unique numerical identifier that can be assigned to a file, a group of files, or a portion of a file, based on a standard mathematical algorithm applied to the characteristics of the data set. The most commonly used algorithms, known as MD5 and SHA, will generate numerical values so distinctive that the chance that any two data sets will have the same Hash Value, no matter how similar they appear, is less than one in one billion. “Hashing” is used to guarantee the authenticity of an original data set and can be used as a digital equivalent of the Bates stamp used in Hard-Copy Document productions.

10. **“Confidentiality Designation”** means the legend affixed to ESI and Documents or provided in the “Confidentiality” metadata field pursuant to Section V, Paragraph 1 below for Confidential Discovery Information as defined by, and subject to, the terms of the Parties’ Stipulated Protective Order in the Action.

11. **“Searchable Text”** means the native text extracted from an Electronic Document or any Optical Character Recognition text (“OCR text”) generated from a Hard-Copy Document or electronic image.

12. **“Load file”** means an electronic file provided with a production set of document images that facilitate the loading of such information into a receiving Party’s document review platform, and the correlation of such data in the platform.

13. **“Unitization”** means a set of paper-scanned images or electronically processed files and indicates where individual pages or files belong together as Documents, including attachments, and where each Document begins and ends.

### **III. DATA SOURCES AND CULLING CRITERIA**

1. **Custodians.** With regard to the collection and production of employee custodial files, for current custodians, Merck shall conduct an attorney-guided collection interview with the custodian and perform a targeted collection of the custodian’s ESI and Documents. All collections will be limited to the time period for which the custodian has responsibility for or involvement with Zostavax or performs work related to the varicella zoster virus. For targeted collections conducted pursuant to the foregoing protocol, ESI and Documents may be collected from the agreed-upon custodians’ company-issued hard drive(s), home drive, folders in any shared or common drive that are identified as being personal by a custodian, removable or

portable media, hard-copy documents and any other company-issued custodial source identified by the custodian.

The Parties agree that for those custodians who are former employees of a party, the producing party will search for and collect, if available, the former employee's company-issued hard drive, home drive, email PST and Documentum that the former employee used at the time of departure from the producing party.

Nothing in this Protocol prohibits the Parties from conducting non-party discovery on custodians who are former employees of Defendants in compliance with the New Jersey Court Rules.

2. **Previously Collected and Produced Data.** The Parties agree that there is no obligation to recollect or reproduce any prior collections or productions collected or produced prior to the entry of this Order. This includes not requiring Parties to reproduce productions in the production format outlined in this Order. However, to the extent that documents produced in *Dotter et al., v. Merck et al.*, No. 2:16-cv-04686 (E.D.Pa.) are reproduced here, Merck will supplement the metadata fields from that production to include those fields identified in Section V of this Protocol.

3. **Search Queries and Methodologies.** The Parties agree that they will cooperate in good faith regarding the formulation of appropriate search queries and methods to be used to cull potentially responsive or relevant ESI. The Parties will continue to meet and confer regarding any search process issues as necessary and appropriate. The Parties may agree to modify the search queries or the search methodologies during the course of the search query negotiation process if the search queries or the results of search methodologies appear under-inclusive or over-inclusive. After the Parties agree upon the final list of search queries, no search queries will

be added to the list absent written agreement by the Parties or, if the Parties reach an impasse after meeting and conferring in good faith, by Court order.

4. **System Files.** The Parties may exclude certain files and folders that are reasonably identified as system files and not likely to contain user-created files.

5. **ESI Date and Time Processing.** Each party's ESI should be processed using a consistent Time Zone for all data. The Party shall share the Time Zone selected for processing of its data with the other Party.

6. **Global De-Duplication.** A Party is only required to produce a single copy of a responsive Document, and a Party shall make reasonable efforts to de-duplicate responsive ESI and Documents based on MD5 or SHA-1 Hash Values at the document level across custodians. For emails with attachments, the Hash Value shall be generated based on the parent-child document grouping (de-duplication shall not break apart families), and only e-mail messages in which the parent document and all attachments are exactly the same will be considered duplicates. However, Metadata identifying all custodians in possession of each document that is removed as a duplicate must be produced in the "CUSTODIAN" field in the production Load File. In addition, outlook.ost files are excluded from processing as duplicative of outlook.pst files. If the Parties believe that a document was inadvertently not produced due to de-duplication, the Parties shall meet and confer to resolve the issue. Should the Parties reach an impasse after meeting and conferring in good faith, then the issue may be raised to the Court.

#### IV. PRESERVATION

1. The Parties acknowledge that they have an obligation to take reasonable and proportional steps to preserve discoverable information in the Party's possession, custody or control.

2. The Parties agree that any existing forensic or non-forensic images of systems, media and devices that are likely to constitute unique sources of potentially discoverable information, such as, for instance, forensic or non-forensic images of the hard drives of custodians of potentially discoverable ESI, shall be preserved.

3. Collection and production of responsive, non-privileged ESI will include archived data that is reasonably accessible. If a party takes the position that any responsive archived data that may contain discoverable information is not reasonably accessible as described by the New Jersey Court Rules, the Parties will meet and confer over the sources. The party taking the position that the sources are not reasonably accessible will identify the sources with sufficient particularity that the requesting party may make a motion with respect thereto.

4. The Parties agree that certain sources of information are not reasonably accessible, and therefore need not be preserved; notwithstanding this agreement, Plaintiffs and Merck shall not allow for the destruction of any hard drive containing unique, potentially responsive material that is considered too damaged to collect without the consent of all Parties.

The Parties agree that the following Documents or ESI are not reasonably accessible:

- a) Shadowed, residual, slack, fragmented, or other data only accessible by forensics.
- b) Random access memory (RAM), temporary files, or other ephemeral data that is difficult to preserve without disabling the operating system.
- c) On-line access data such as temporary Internet files, history, cache, cookies, and the like.
- d) Data stored on photocopiers, scanners and fax machines.



e) Data in metadata fields identified in Section V, Paragraph 1, infra, shall be produced in accordance with the terms set forth therein. No other metadata fields need to be preserved and/or produced.

f) Disaster and/or system recovery backup and/or media do not need to be preserved.

g) Server logs, system logs, or network logs.

h) Instant message or "chat" messages which reside solely in the messenger program's cache or backup.

i) Data remaining from systems no longer in use that is unintelligible on any system. If a party becomes aware of any data within the scope of this matter that may be decommissioned off an active system, the party will take reasonable measures to keep the data accessible and will meet and confer with opposing counsel about the data.

j) Logs of calls made from or to cellular or land-line phones. This excludes call activity that is made to Merck's National Service Center. Certain records are maintained in the records of Merck's National Service Center and are preserved.

## V. FORMAT OF PRODUCTION

1. **Non-Redacted Electronically Stored Information Not Produced in Native Form.** Non-redacted ESI should be produced in a form no less "searchable" than it is maintained in the normal course of the producing Party's business. ESI will be produced in single-page, black and white, 300 DPI, Group IV TIFF image file format together with Concordance or Summation Load Files (OPT or DII files) (depending on the preference of the requesting party). The orientation of the document will be the same as its original orientation. Conversion of Word documents: When Word documents are converted to TIFFs, the version that

will be converted is as it was last saved and with track changes turned on. This means the images and extracted text will reflect the track changes. In all events, conversion of Microsoft Office document types to TIFF shall reflect comments, speaker notes, footers, headers and track changes. Non-redacted ESI shall be produced with searchable extracted text of the entire Document (at the document level in a .TXT file) and the following Metadata fields in a Concordance .DAT file, where applicable:

FIELD NAME	SAMPLE DATA	FIELD DESCRIPTION	APPLICABLE FILE TYPE(S)
BEBATES	ABC000001	Beginning production number or Bates number for a given file/document	E-mail and E-Doc
ENDBATES	ABC000002	Ending production number or Bates number for a given file/document	E-mail and E-Doc
BEGATTACH	ABC000001	Beginning production number or Bates number for the attachment range	E-mail and E-Doc
ENDATTACH	ABC000015	Ending production number or Bates number for the attachment range	E-mail and E-Doc
ATTACHRANGE	ABC000001 – ABC000015	Production number of first page of attachment range through last page of attachment range. All Electronic Documents attached to an e-mail will be produced contemporaneously and sequentially immediately after the parent e-mail.	E-mail and E-Doc

FIELD NAME	SAMPLE DATA	FIELD DESCRIPTION	APPLICABLE FILE TYPE(S)
CUSTODIAN(S)	Smith, John; Brown, Julie	Custodial source(s) of documents, including documents not produced due to de-duplication.	All
SUBJECT	Meeting Minutes	Subject line extracted from e-mail message or title from operating system metadata	E-mail and E-Doc
FROM	Smith, John	Sender	E-mail
TO	Jones, Tom; Brown, Julie	Recipient	E-mail
CC	Cain, John	Copyee	E-mail
BCC	Stevens, Lisa	Blind Copyee	E-mail
DATESENT/TIMESENT	02/08/2008 08:59 EST	Sent date and time of an email message in the following format: MM/dd/yyyy HH:mm zzz. MM is month mm is minutes zzz is the time zone the data was processed in.	E-mail
DATERCVD/ TIMERCVD	02/08/2008 08:59 EST	Received Date and time an email message was received in the following format: MM/dd/yyyy HH:mm zzz MM is month mm is minutes zzz is the time zone the data was processed in.	E-mail
AUTHOR*	Smith, John	Name of person who created document *Parties acknowledge that the Author field may not actually be the Author of the document.	E-Doc
FILENAME	October Agenda.doc	Original file name of native document	E-Doc
FILE PATH(S)	C:\My Documents\Agenda	Pathway(s) for documents	E-mail and E-Doc

FIELD NAME	SAMPLE DATA	FIELD DESCRIPTION	APPLICABLE FILE TYPE(S)
TEXT PATH	D:\001\RET000005.txt	Relative path to document level text file	E-mail and E-Doc
DATECREATED/ TIMECREATED	02/08/2008 08:59 EST	Date and time document was created in the following format MM/dd/yyyy HH:mm zzz MM is month mm is minutes zzz is the time zone the data was processed in. Parties acknowledge that the Date and Time Created field may not actually be the Date and Time Created due to the ease of change to that field (e.g., the created date and time reflects the date and time when the file was created in that particular location on the computer or on the other storage device location)	E-Doc
DATELASTMOD	10/09/2006	Date that non-email file was modified as extracted from file system metadata	E-Doc
FILEEXT	Msg	File extension of native document	E-mail and E-Doc
FILESIZE	50kb	Size of the original email or e-doc	E-mail and E-Doc
DOCUMENTTYPE	Application/msword	Describes the type of document. (mime type)	E-mail and E-Doc
PAGECOUNT	16	Number of pages for the document	All
HASH	d131dd02c5e6eec5 694d0698aff85c2fs ch5876217eab4004 5733b8fb789	MD5 or SHA1 Hash Value	E-mail and E-Doc
NATIVEFILE PATH	D:\001\ABC000005.xls	Path or hyperlink to documents being produced in native file format	Native

<b>FIELD NAME</b>	<b>SAMPLE DATA</b>	<b>FIELD DESCRIPTION</b>	<b>APPLICABLE FILE TYPE(S)</b>
CONFIDENTIALITY	Confidential	Indicates the confidentiality designation of the produced document pursuant to any applicable Protective Order	All
REDACTION	Privilege	Field noting redactions applied to document	All
PRODVOL	VOL001	Name of the Production Volume	All

This list of fields does not create any obligation to create or manually code fields that are not automatically generated by the processing of the ESI or that do not exist as part of the original Metadata of the Document. The Parties acknowledge there can be differences between the Operating System (Windows) and Application date/time fields and also agree that producing Party has no obligation to try and reconcile the differences, if any.

If Documents, such as electronic mail, are produced, the relationship between related Documents (e.g., email attachments) should be preserved. All Electronic Documents attached to an email are produced contemporaneously and sequentially immediately after the parent email. Parties may request the production of Documents or ESI in Native form by Bates number in the event that a Document or ESI produced in TIFF form is illegible.

A Document is an "e-mail thread" if it is an email communication that contains prior or lesser-included email communications that may also exist separately in the Party's electronic files. A most inclusive email thread is one that contains all of the prior or lesser-included emails, including attachments, for that branch of the email thread. The Producing Party must produce the most-inclusive email thread. The Producing Party may produce the prior or lesser-included email threads separately in the production. The Parties agree that email thread suppression will

not be applied to produced emails. If the most inclusive email thread is either redacted or withheld for privilege, the Producing Party need only include the most inclusive email thread on a privilege log and need not produce or log the prior or lesser-included emails within the same thread.

2. **ESI to be Produced in Native Form.** Non-redacted Microsoft Access or other databases, Microsoft Excel or other spreadsheet files, Microsoft PowerPoint files, or other similar file formats where an image file does not adequately represent the files as maintained in the ordinary course, shall be produced in their Native Format. This includes (a) the formulae imbedded in and fields hidden in the spreadsheets, (b) the comments, hidden slides, speaker's notes, and similar data in the presentation files, and (c) any Metadata contained in the file. Files produced in Native Format shall be named either with a sequential Bates number followed by the file name or with a sequential Bates number followed by the Confidentiality Designation, if applicable, and the file name. A placeholder TIFF with the original file name, the language "Document Produced in Native" (or similar language), and stamped with assigned Bates number and confidentiality designation shall be included for each native file produced. To the extent native files, including electronic spreadsheets or presentations, are redacted, production shall be made in TIFF format in accordance with the section on redacted documents and not in Native Format.

3. **Redacted Documents.** The Parties may redact Documents or ESI on the following bases: attorney-client privilege; attorney work product privilege; HIPAA related privacy information; personal, private information, such as social security numbers; third-party information; information required to be redacted by New Jersey law or regulation; information that constitutes a trade secret; information Merck obtains from a third party pursuant to a

contract requiring confidentiality; other unrelated Merck products except for Varivax and/or ProQuad; or for any other reason, which the producing party shall describe to the receiving party on the Document or in a cover letter. If the receiving Party finds a Document to be incomprehensible or unintelligible because of a redaction, the Parties will meet and confer to try in good faith to resolve the dispute. For redacted electronic files, and redacted Hard-Copy Documents, the Parties agree to produce ESI and Hard-Copy Documents as redacted single-page, black and white, 300 DPI, Group IV TIFF image file format together with Concordance or Summation Load Files (depending on the preference of the requesting Party), with Metadata in the dat. file. All Electronic Documents attached to an e-mail are to be produced contemporaneously and sequentially immediately after the parent e-mail. The Metadata fields for a redacted Document or ESI will include BEGBATES, ENDBATES, BEGATTACH, ENDATTACH, CUSTODIAN, and TEXT, which shall contain the OCR or Optical Character Recognition text so as not to reveal redacted text. To the extent Documents or ESI have been de-duplicated, the CUSTODIAN field shall list all custodians that had possession of the Document. No other Metadata fields will be produced for a redacted Document.

4. **Hard-Copy Documents.** Hard-Copy Documents should be produced as single-page, black and white, 300 DPI, Group IV TIFF image file format together with Concordance or Summation Load Files (depending on the preference of the requesting Party) with coded data contained in a separate file. In scanning hard-copy documents, multiple distinct documents should not be merged into a single record, and single documents should not be split into multiple records (i.e., hard copy documents should be logically unitized). In the case of an organized compilation of separate documents – for example, a binder containing several separate documents behind numbered tabs – the document behind each tab should be scanned separately,

but the relationship among the documents in the binder should be reflected in proper coding of the family fields set out below. The producing Party shall also provide document level OCR text files to accompany the TIFF format production. The minimum fields for a scanned Hard-Copy Document record will be BEGBATES, ENDBATES, BEGATTACH, ENDATTACH, CUSTODIAN, and TEXT, indicating the beginning and ending Bates numbers, attachments ranges of all documents, the custodian information, and the OCR or Optical Character Recognition text.

5. **Document Unitization for Hard-Copy Documents.** If a Hard-Copy Document consists of more than one page, the Unitization of the Document and any attachments and/or affixed notes shall be maintained as it existed in the original Document, so that each page will not be split, but instead sequenced and saved together, as they existed in the original.

6. **Non-Custodial Documents.** ESI and Documents from non-custodial sources, the Parties shall cooperate to produce responsive ESI and Documents in a reasonably useable production format.

7. **Searchable Text.** The Parties agree that they will produce Searchable Text for all Electronic Documents and Electronic Data produced. For all non-redacted ESI, the searchable text will be extracted directly from the native file. Likewise, the Parties agree that they will produce Searchable Text for all Hard-Copy Documents that have been converted to images. For any Document where text has been redacted, Searchable Text will be provided for the non-redacted text.

8. **Bates Numbering.** Each page of a produced image shall have a unique Bates number electronically "burned" onto the image at a location that does not unreasonably obliterate or obscure any information from the source Document. Each TIFF image or native file assigned



a Bates number shall be assigned a Bates number that is unique and maintains a constant length across the entire document production. No other legend or stamp will be placed on the document image other than confidentiality legends (where applicable) or redactions.

9. **No Color.** ESI and Documents in color need not be produced in color.

10. **Foreign Language Documents.** To the extent that ESI and Documents are produced that contain languages other than English, in whole or in part, the producing party shall produce all foreign language ESI and Documents in the original language. The producing party has no obligation to provide a translation of the ESI and Document or any portion thereof.

11. **Production Media.** Documents shall be produced on CDs, DVDs, USB hard drives, portable hard drives or through secure file transfer protocols (e.g., FTP) or similar secure electronic transmission. The Production Media shall be labeled with the Volume Number along with the Bates Number range(s) of the materials, and where not practicable to do so, may be provided in an accompanying letter.

12. **Replacements.** All files that are replaced for any reason must be annotated with an "R" designation appended to the Bates prefix. A cross reference file will be provided identifying the Document's original Bates and its replacement Bates number.

13. **Compressed Files.** Compressed file type (i.e., .CAB, .GZ, .TAR, .Z, .ZIP) shall be decompressed in a reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible compression resulting in individual files.

14. **Encrypted Files.** The Producing Party will take reasonable steps, prior to production, to unencrypt any discoverable electronically stored information that exists in encrypted format (e.g., because password-protected) and that can be reasonably unencrypted.

## VI. PRIVILEGE AND WORK PRODUCT CLAIMS

1. **Privilege Log.** Parties recognize that some Documents may be redacted or withheld on the grounds of attorney-client privilege, work product doctrine, or other applicable privilege or immunity from disclosure (collectively, "privilege"), including any legal holds issued during the course of these Actions. For each responsive Document withheld or redacted because of privilege, the producing Party's privilege/redaction logs shall include the following information to the extent it is reasonably available:

- a) Custodian or source: states the name of the person(s) or non-custodial source from which the Document was collected;
- b) Date of the Document, or if no date appears, the date(s) on which it was prepared, sent, or received;
- c) Author(s);
- d) For Documents produced, but redacted on the ground of privilege, the starting and end Bates number;
- e) Recipient(s), CC(s), BCC(s) (for e-mail and hard-copy communication such as letters and internal memoranda);
- f) General description of the nature and subject matter of the Document;
- g) Specification of the privilege claimed;
- h) The basis for the privilege claim.

When the Document is an email thread containing one or more separate emails, it shall be logged as one entry, and the Date, Author and Recipient(s), CC(s) and BCC(s) fields on the log can be populated from the top line email as long as the Party withholding documents adequately describes the basis of the privilege claim. Each Document within a family for which a Party claims a privilege shall be separately logged or otherwise accounted for. The Parties agree that a

Party need not include on its privilege log any document or communication for which the Party asserts privileged that is (i) dated after the commencement of this Action; and (ii) and covered by the attorney-client privilege, attorney work product protection, and/or any other applicable privilege or protection. If any disputes arise concerning any privilege log, the Parties shall meet and confer to try to reach a mutually agreeable solution. If they cannot agree, the matter may be brought to the Court.

**Inadvertent Disclosure of Protected Documents.** Consistent with the New Jersey Court Rules, neither the attorney-client privilege nor the work product protection is waived by disclosure connected with this Action. The inadvertent or unintentional production of privileged or work product protected ESI, Documents, or other information is not a waiver of the privilege protection in this case or in any other related proceeding or otherwise. Nothing in this Order shall be construed to prohibit a producing Party from seeking relief from any inadvertent or unintentional disclosure of confidential, privileged, or work product information. Nothing in this Order shall diminish the legal rights of any person seeking such relief. When a producing Party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving Parties are those set forth in the New Jersey Court Rules. Nothing contained herein is intended to or shall serve to limit a Party's right to conduct a review of ESI, documents, or information (including metadata) for responsiveness, relevance and/or segregation of privileged and/or protected information before production. Pursuant to New Jersey Court Rule 4:10-2(g) and New Jersey Rule of Evidence 504, neither the attorney-client privilege nor the work product doctrine is waived by inadvertent production in this Action or any other action.

## VII. MISCELLANEOUS

1. **Third Party Documents.** A Party that issues a non-Party subpoena (“Issuing Party”) shall include a copy of this Order with the subpoena and state that the Parties to this Action have requested that third parties produce documents in accordance with the specifications set forth herein. Within 14 days of receiving any ESI or Documents obtained pursuant to a non-Party subpoena, the Issuing Party shall produce such ESI or Documents to all Other Parties, except where the Third Party Documents are to be used in a deposition in which case the issuing Party shall produce such ESI or Documents to all other Parties no later than three (3) days prior to the deposition. Nothing in this Order is intended or may be interpreted to narrow, expand, or otherwise affect the rights of the Parties or third parties to object to a subpoena.

2. **On-Site Inspection of ESI.** Nothing in this Order precludes a party from seeking an on-site inspection of the opposing party’s ESI pursuant to the New Jersey Court Rules or upon agreement of the Parties.

3. **Good Faith.** The Parties shall make their best efforts to comply with and resolve any differences concerning compliance with this Order. If a producing Party cannot comply with any material aspect of this Order, such Party shall inform the requesting party in writing at or before the time of production as to why compliance with the Order was unreasonable or not possible. No Party may seek relief from the Court concerning compliance with the Order unless it has conferred with other affected Parties to this Action.

4. **No Effect on Discovery or Admissibility.** This Order does not address, limit, or determine the relevance, discoverability, agreement to produce, or admissibility of ESI. Nothing in this Order shall be construed to affect the admissibility of any document or data. All objections to the admissibility of any document or data, except as to the authenticity of the

documents produced by a Party as to which that Party stipulates, are preserved and may be asserted at any time.

5. **Protective Order.** All Documents produced by the Parties will be subject to the terms of the Stipulated Protective Order entered in this Action.

**IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

Dated: March 15, 2019

Respectfully submitted,

/s/ Margaret Cordner

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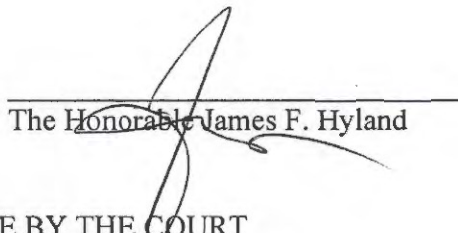
**PLAINTIFFS' LIAISON  
COUNSEL**

/s/ Eileen Muskett

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**DEFENDANTS' LIAISON  
COUNSEL**

APPROVED AND SO ORDERED this 22<sup>nd</sup> day of March, 2019

  
The Honorable James F. Hyland

A COPY OF THIS ORDER SHALL BE POSTED ONLINE BY THE COURT